

No. 9/1/87-6 Lab./914.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. B. M. Metal & Steel Products, Near Bus Stand, Jagadhri.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Ref. No. 11 of 1985.

SHRI CHANDERESH KUMAR C/O SHRI
BALBIR SINGH, 126 LABOUR COLONY,
YAMUNA NAGAR, AND THE MANAGEMENT
OF THE MESSRS B. M. METAL & STEEL
PRODUCTS, NEAR BUS STAND, JAGADHRI.

Present:—

Shri Balbir Singh, for workman.

Shri Madhu Sudan, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Chandresh Kumar and Messrs B. M. Metal & Steel Products, Jagadhri to this Court. The terms of the reference are as under:—

"Whether termination of services of Shri Chandresh Kumar is just and correct, if not, to what relief is he entitled?"

Workman through his demand notice alleged that he was appointed as a Mistri on rolling Machine in the year 1977. On the night intervening 12 or 13 June, 1984 at about 1.30 A.M. he met with an accident and thereafter; he was admitted in Hospital and was released on 28th August, 1984. He obtained fitness certificate from the Doctor incharge of E.S.I., Jagadhri and reported for duty on 29th August, 1984 along with fitness certificate. But he was not taken on duty by the management and was told that his name had been struck off from the rolls. He made a complaint to Labour Inspector, Jagadhri and thereafter issued demand notice.

He prayed that his services were terminated by the respondent management in contravention of provision of section 25(F) of Industrial Disputes Act. So he be got reinstated with continuity in service and with full back wages.

Respondent management contested the dispute and contended that workman remained in the service of respondent for about 1½ years and abandoned job in June, 1984. His name was struck off from the rolls. He never appeared with a fitness certificate. It was further contended that claim of the workman is false and baseless it be rejected.

Workman filed replication through which he controverted the contentions of the respondent management.

On the pleadings of the parties the following issues were framed:

1. Whether termination order dated 29th August, 1984 is just if not, its effect?
OPM

2. Relief.

I have heard Shri Balbir Singh, A.R. for workman and Shri Madhu Sudan Saran Cowshish for respondent management and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under:

Issue No. 1

In support of this issue management examined Shri Brij Mohan one of the partner of the respondent management and MW-2 Shri Ram Kewal, Chowkidar. Shri Brij Mohan stated that workman Chandresh Kumar remained in the job of the respondent management for 1½ years. He met with an accident. Thereafter he never came to the management with fitness certificate on account of his absence his name was struck off from the rolls.

MW-2 Shri Ram Kewal stated that he is only Chowkidar in the respondent management prior to his joining service of respondent Shri Chandresh Kumar used to be Chowkidar in respondent management. Workman never reported on duty in respondent management after his joining service of the management.

On the other hand Shri Chanderesh Kumar examined himself as AW-1. He stated that he joined service of respondent-management in 1977. He used to work at rolling machine on 12th June, 1984 he met with an accident. He remained under treatment up to 28th August, 1984. After obtaining fitness certificate when he reported on duty on 29th August, 1984 to management at that time he was told that his name had been struck off from the rolls. No notice regarding striking of his name from the rolls was given to him. No pay, in lieu of, notice, nor any retrenchment compensation was even paid to him. He filed a complaint against the management to Labour Inspector. Copy of the same is Exhibit A-1. In spite of that he was not taken on duty then he raised demand notice on that account this dispute was referred in this court.

In view of the above back ground and evidence I draw an conclusion that Shri Chanderesh Kumar workman had been in the service of respondent-management. It is an admitted fact that he met with an accident and get his treatment from ESI dispensary. When he reported on duty along with fitness certificate from ESI Doctor. He was not allowed to join because respondent-management had employed Shri Ram Kewal MW-2. Immediately thereafter workman filed an complaint against the management to Labour Inspector, Jagadhri and thereafter he issued demand notice but the management did not take him in its employment. This clearly shows that the workman reported for duty along with fitness certificate but the management deliberately did not allow him to resume duty, nor the management issued any notice prior to striking off the name of the workman from its rolls nor any pay in lieu of, notice period was paid to him. No retrenchment compensation was ever given to him. In these circumstances it is evident that the respondent-management illegally struck off the name of the workman from its rolls, so the workman is entitled to reinstatement with continuity in service and with full back wages. It is in the statement of Shri Chanderesh Kumar that he was in the service of respondent-management since 1977 and it was admitted by Shri Brij Mohan MW-1 that Shri Chanderesh Kumar remained in their employment for 1½ years. So it is also admitted fact that services of the workman was not less than 240 days. The management violated provisions of section 25 (F), so their order of termination of service of workman is unjust and illegal. So

this issue is decided, in favour of, workman against the management.

Issue No. 2

For the foregoing reasons on the basis of my issue-wise findings on issue No. 1 the workman is entitled to reinstatement with continuity in service and with full back wages. I pass award regarding the dispute between the parties accordingly.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Dated : 5th December, 1986

Endorsement No. 3332, dated 10th December, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6 Lab./918.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of M/s. (i) State Transport Commissioner, Haryana Roadways, Chandigarh (ii) Haryana Roadways, Yamuna Nagar.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Ref. No. 261 of 1985.

SHRI ASHOK KUMAR, S/O SHRI DEV RAJ SHARMA, VILLAGE & P.O. PANJLASA, TEH. NARAINGARH, DISTT. AMBALA AND THE MANAGEMENT OF THE MESSRS STATE TRANSPORT COMMISSIONER, HARYANA ROADWAYS, CHANDIGARH (II) HARYANA ROADWAYS, YAMUNA NAGAR

Present:—

Shri Siri Ram Rangray, for workman.

Shri Rama Kant, for respondent.

AWARD

Issue No. 1:

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Ashok Kumar and Messrs Haryana Roadways, Yamuna Nagar etc. to this Court. The terms of the reference are as under:

"Whether termination of services of Shri Ashok Kumar is just and correct, if not to what relief is he entitled?"

Workman alleged that he had been in the service of respondent management as Chowkidar on daily wages since 7th July, 1984. His services were terminated on 22nd April, 1985 in violation of provisions of section 25 (F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with back wages.

Respondent management contended the dispute and contended that application is wrong and denied. Services of the workman were discontinued after 30th April, 1985 when his term was not renewed. Petitioner was in service for fixed period. In accordance with terms and conditions mentioned in the appointment letter. The service period of the petitioner expired on 30th April, 1985 and thus services of workman automatically came to an end. He is not entitled to the relief claimed for.

Workman filed replication through which he controverted the contentions of the respondent management and supported his on claim.

On the pleadings of the parties the following issues were framed:

Issues :

1. Whether termination of services of workman is illegal and incorrect, if so its effect? OPM
2. Relief.

I have heard Shri Siri Ram Rangray for workman and Shri Rama Kant, Law Officer for respondent management and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under:

In support of this issue workman examined himself as AW-1. He stated that he joined service of respondent management on 6th July, 1984 as a Chowkidar and he remained in the service of respondent for 253 days. On 22nd April, 1985 he was removed from service in violation of provisions of section 25 (F) of Industrial Disputes Act, 1947. He further stated that during the period of his service no letter of any kind was given to him by the respondent. In cross-examination he denied the fact that he was appointed for a fixed period with the condition that his services could be terminated at any hour.

Respondent examined Shri Baljit Singh who stated that workman was appointed on daily wages. Appointment letter is Exhibit M-1, M-2 his appointment was for a fixed period. His services were never terminated in fact he was recruited in leave arrangement. As soon as Shri Gurdev Singh, Chowkidar came after completing his leave, services of the workman automatically came to an end.

In view of the above evidence I am of the considered view that in demand notice workman has taken a plea that he was appointed as a Chowkidar on daily wages basis. However, he has tried to made up his case that his appointment was regular because in his statement he never deposed that he was appointed on daily wages basis. But the statement of Shri Baljit Singh MW-1 and copies of office order Exhibit M-1, M-2 and M-3 clearly shows that appointment of Shri Ashok Kumar was for a fixed period in leave vacancy arrangement in place of Shri Gurdev Singh, Chowkidar. When Shri Gurdev Singh returned after enjoying his leave; services of Shri Ashok Kumar were not extended or renewed for further period because Shri Gurdev Singh joined his duty and Shri Ashok Kumar had been appointed on daily wages basis on leave vacancy arrangement, so his period of appointment expired automatically in view of provisions of section 2(00)(bb) of Industrial Disputes Act, 1947. So this issue is decided, in favour of management against the workman.

Issue No. 2 Relief

AWARD

For the foregoing reasons on the basis of my findings on issue No. 1, the claim of the workman is rejected. I pass award regarding the dispute in hand between the parties accordingly.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Dated : 22nd December, 1986.

Endorsement No. 3415, dated 22nd December, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

No. 9/1/87-6 Lab./921.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. K. K. & Company, 212, Industrial Area, Panchkula (Ambala).

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Ref. No. 108 of 1985

(Misc. No. 4 of 1986)

SHRI SUBHASH YADAV C/O SHRI DADU
NATH PARSHAD VILLAGE RELY, P.O.
PANCHKULLA DISTT. AMBALA AND THE
MANAGEMENT OF THE MESSRS K. K. &
COMPANY, 212, INDUSTRIAL AREA,
PANCHKULA (AMBALA)

Present:—

Shri Abhey Singh, for workman.

Shri R. L. Chopra, for respondent.

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Subhash Yadav and Messrs K. K. & Company, 212, Industrial Area, Panchkula (Ambala) to this Court. The terms of the reference are as under:

"Whether the termination of services of Shri Subhash Yadav is just and correct, if not to what relief is he entitled?"

Shri Subhash Yadav through his demand notice and statement of claim alleged that he had been in the service of respondent management for the last more than four years. His services were terminated on 2nd June, 1984 without assigning any reason and notice whatsoever in contravention of section 25 (F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent management contested the dispute and contended that statement of claim has got no value in the eyes of law because it was neither signed nor varified by the workman. Management further urged that the workman himself resigned the services of the respondent management and took full and final payment amounting to Rs. 1,578 and issued receipt to the management. It was also contended that there is no question of victimisation of the workman on any account because the workman tendered his resignation willfully.

Workman's Authorised Representative filed replication through which he denied the contentions of the respondent-management.

On the pleadings of the parties, the following issues were framed :—

ISSUES:

- (1) Whether the termination order dated 2nd June, 1984 is justified, if not, its effect ? OPM
- (2) Whether claim statement has not been properly signed and varified if not, its effect ? OPM
- (3) Relief.

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence available on the file. My issuewise findings are as under :—

ISSUE NO. 1:

In support of this issue respondent-management examined Shri Vipon Kaushal, MW-1, who stated that workman Shri Subhash Yadav was employed in their firm as a Helper. He turned up on duty up to 31st May 1984. On 1st June, 1984, he absented on account of illness. On 2nd June, 1984, he appeared in the office of management with an resignation letter which is, Exhibit M-1. It was accepted, his dues were calculated and were paid to him. Voucher and receipt in this respect are, Exhibit M-2 and M-3, Vide payment receipt, Exhibit M-3 Rs. 1,578 were paid to him. He further stated that he has brought the cash book and ledger book in which corresponding entries were made regarding this payment. In cross-examination he stated that workman Subhash Yadav signed voucher, Exhibit M-2 in his presence.

Workman appeared as AW-1 he stated that he never tendered any resignation. In fact his services were terminated without any notice, without making payment of any retrenchment compensation. He never received Rs. 1,578. He further deposed that he was active member of trade union, so his services were terminated. The workman could not afford to deny his signatures on his resignation letter, Exhibit M-1 and on voucher, Exhibit M-2,—vide which payment of sum of Rs. 1,578 was made to him.

Shri Abhey Singh argued that the management generally procures signatures of the workman on blank papers and thereafter these blank papers are being used in preparing resignation letter and payment receipts. But in the case in hand when Shri Subhash Yadav appeared in the witness-box as AW-1 he did not state on oath that the management had taken his signatures on certain blank papers, so this contention of Authorised Representative of workman is baseless and carries no weight. In view of the above evidence I am of the considered view that in fact it is not a case of termination of services of the workman by the management, but, in fact, the workman himself tendered his resignation and left the service on receipt of his dues. Workman has admitted his signatures on resignation letter, Exhibit M-1 and voucher as well as receipt Exhibit M-2, so this issue is decided, in favour of management against the workman.

ISSUE NO. 2:

The workman neither signed statement of

claim nor verified it. The replication was also not signed by the workman. The statement of claim and replication have been submitted by Shri Abhey Singh, Authorised Representative of the workman which is not a good practice in the eyes of law and in fact there is no proper statement of claim and replication on the file, so this issue is decided, in favour of management against the workman.

ISSUE NO. 3, RELIEF:

For the foregoing reasons on the basis of my issuewise findings I hold that in this case there is no termination on the part of management regarding services of the workman, but in fact workman himself resigned services of management of his own. So I pass award regarding the dispute in hand accordingly.

V. P. CHAUDHARY,

The 1st December, 1986. Presiding Officer,
Labour Court Ambala.

Endorsement No. 3327, dated 10th December, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to the Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court Ambala.

No. 9/1/87-Lab./1163.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of (i) State Transport Commissioner, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Kaithal.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER
LABOUR COURT, AMBALA

Reference No. 28 of 1986

SHRI MOHINDER KUMAR, C/O SHRI RAJESHWAR NATH, 2655, TIMBER MARKET, AMBALA CANTT., AND THE MANAGEMENT OF THE (I) STATE TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH, (II) GENERAL MANAGER, HARYANA ROADWAYS, KAITHAL

Present:

None for workman.

Shri A. R. Goyal, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947, referred dispute between Shri Mohinder Kumar and General Manager, Haryana Roadways, Kaithal to this Court. The terms of the reference are as under :—

"Whether termination of services of Shri Mohinder Kumar is just and correct, if not to what relief is he entitled?"

Workman through his demand notice alleged that he had been serving the respondent as a Bus Conductor since 13th May, 1970. He was placed under suspension on 22nd April, 1977 on the charges of embezzlement. Thereafter, a charge-sheet was served upon him on 14th August, 1984 that he failed to get his presence marked in the office from 16th April, 1977 to 31st October, 1983. This charge-sheet was replied by him. But his reply was not considered properly and on the basis of this sole charge his services were terminated. The order of termination is illegal and the quashed.

Management contested the dispute and contended that the workman was specifically directed during his suspension that he will get his daily presence marked in the office but did not comply with these orders, so show-cause notice was issued to him. Personal hearing was afforded and thereafter his services were terminated.

Workman filed replication through which he controverted the contentions of the respondent-management by saying that in fact, he attended the office but the respondent did not mark him present in the attendance register.

On the pleadings of the parties the following issues were framed :—

ISSUES:

- (1) Whether termination order regarding services of workman unjustified and incorrect, if so, its effect ? OPW
- (2) Whether inquiry conducted by Department is fair and proper ? OPM
- (3) Relief.

I have heard Shri Madhu Sudan Saran Cowshish, Authorised Representative for the

workman and Shri A. R. Goyal for respondent-management and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under :—

ISSUE NO. 1:

In support of this issue, workman examined himself as AW-1, he deposed that he joined as Bus Conductor on 13th May, 1970. On 16th April, 1977, an embezzlement case was registered against him. He was suspended, thereafter a charge-sheet was served upon him which was duly replied but his reply was not given any due consideration and the services were terminated on the basis of disobedience.

Management examined Shri Satinder Chema who stated that workman was suspended on the basis of embezzlement charges. Workman used to be paid subsistence allowance. MW-2 Shri Om Parkash, Clerk, produced copy of suspension order is. Exhibit M-1. Copy of charge-sheet, dated 14th August, 1984. He stated that inquiry was conducted. Workman was directed to mark his presence in the attendance register in the office but he remained absent from 1977 to 1983 nor he filed any affidavit for taking subsistence allowance. MW Shri Gian Chand, Clerk, he also corroborated the statement of MW-2. In cross-examination he stated that C.S.R. is applicable to the employees of respondent-management.

In view of the above evidence it is clear up to this extent that workman was employed as Bus Conductor in the employment of respondent-management. He was suspended on 22nd April, 1977 on the basis of charges of embezzlement with the direction that he shall get himself marked present in Traffic Branch in attendance register but the workman did not comply with these orders on the basis of the same show-cause notice was issued which was replied by the workman. His reply was found unsatisfactory. Thereafter inquiry was conducted and he was terminated. Authorised Representative of the workman argued that workman had been appearing in the office of the management but he was not knowingly marked present. He also argued that there are certain judicial pronouncements in which it has been observed that even if during suspension period the workman did not report in the office and did not mark himself present in the attendance register, on this account his services cannot be terminated unless the major charges

on the basis of same he was suspended proved. He referred to 1968, Vol. 2 LLJ, page 45 and 1966, AIR Kerla High Court, page 212 in 1982 LIC, page 1140 Andhra High Court, Zonal Manager, Food Corporation vs. Khaled Ahemad Zat, page 1142, it was observed that expression suspension means debaring an employee from service temporarily, we failed to understand how when any employee is debarred temporarily from service he could be compelled to attend office and mark his attendance daily and also be visited with penalty if he does not mark his attendance. The instructions in our view cannot be regarded as merely filling up the gap in the regulations when they are inconsistent with the rules. Further at page 1143, it was observed it is well settled that even if a petitioner does not question the legality of an order, when it is brought to the notice of the court that the order on the face of it is illegal it is not only the right but it is the duty of the Court to interfere in the exercise of its jurisdiction.

Similar observations were also made in 1977, Vol. 2, SLR page 194 the Calcutta High Court in a case Chitranjan Gosh vs. I. G. of Police, West Bengal in para 2, page 195 on behalf of the petitioner it is contended that direction to attend roll call is without jurisdiction.

In para No. 3 at page 195 it was observed that in my opinion these orders directing the petitioner who is under suspension pending inquiry, to attend roll call is illegal and without any authority whatsoever.

In 1970 AIR Supreme Court, page 1495 in a case titled V. P. Gindroniya vs. State of Madhya Pradesh it was observed that if that the effect of the order of suspension in this case then the petitioner cannot be called upon to attend the roll call during the period of suspension nor during the period of suspension he cannot be asked to render any service or perform any duty. Attending roll call by a police personnel is a matter of duty if he has been suspended from performing his duty, the authority cannot at the same breath call upon him to attend roll call.

In view of my above discussion on facts and merits the legal position is very clear the Hon'ble Judges have been emphasising that if any employee has been put under suspension, in those circumstances he cannot be compelled

to attend the office for getting his presence marked in the attendance register. So in the case in hand the order of General Manager that the workman shall get his presence marked in the attendance register in the Traffic Branch is illegal and unjust. On the basis of this illegal and unjust order, termination order passed by the General Manager cannot be sustained, hence it is set aside from the day of termination. The workman is placed in the similar position he was on the day of termination, in other words on that very day he was under suspension and he will continue to remain under suspension up till the date. The major charges which were levelled against him are proved or found wrong. So this issue is decided accordingly, in favour of, workman against the management.

ISSUE NO. 2:

In view of my findings on issue No. 1 this issue has become redundant.

ISSUE NO. 3.

On the basis of my findings on issue No. 1, I order that termination order is illegal and the workman is put in the same condition and position in which he was on the day of termination. I pass award regarding the dispute in had accordingly.

The 7th January, 1987.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 103, dated 16th January, 1987.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15, of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 5th March, 1987

No. 9/3/87-6Lab/809.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute

between the workman and the management of which has been emphatically denied by the respondent.

IN THE COURT OF SHRI A. S. CHALIA,
PRESIDING OFFICER,
LABOUR COURT, FARIDABAD

Reference No. 187 of 1985

between

SHRI MURARI LAL, WORKMAN, AND THE
RESPONDENT-MANAGEMENT OF M/S BATA
INDIA LTD., NIT, FARIDABAD

Present:

Shri Manohar Lal, for the workman.

Shri C. M. Lal, for the respondent.

AWARD

This reference under section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947), as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—vide its endorsement No. ID/FD/51-85/24707-12, dated 8th April, 1985, to adjudicate upon the dispute of service matter covered by Second Schedule under section 7 of the said Act, arisen between Shri Murari Lal, workman and the respondent-management of M/s Bata India Ltd., NIT, Faridabad. Accordingly it has been registered as reference No. 187 of 1985.

2. Briefly, the facts of the case are that Murari Lal had been in the service of the respondent for about 8 months only, as a Helper and he was involved in an accident on 21st July, 1984, and after recovery he had reported for duty in October, 1984. The allegations are that he was not allowed to resume his duty on 15th December, 1984 and that his services have been wrongly and illegally terminated and he is hence entitled for reinstatement.

3. On the other hand, the defence of the respondent has been that firstly he was appointed on 3rd July, 1984 up to 3rd August, 1984 and then on 15th October, 1984 to 28th December, 1984 and in this manner he has worked for 56 days only and his services were rightly dispensed with. It has also been claimed that he was purely on daily basis and he is not entitled for reinstatement. By way of amendment it has been claimed by Murari Lal that he had been in the service of the respondent for about one year

4. My learned predecessor had framed the following issues on 5th September, 1985 :—

(1) Whether reference is had as pleaded in the written statement ?

(2) As per reference ?

5. From the side of respondent, Assistant Superintendent has appeared. On the other hand, statement of Shri Murari Lal has been recorded.

6. I have heard the parties as presented above. The findings are as below :—

ISSUE NO. 2

7. It has been contended on behalf of the respondent that Murari Lal had worked only for 56 days as per terms of contract and he is not entitled to be reinstated since he was not in continuous service of the respondent. In support of it reference has been made to Exhibit M-4 and M-6 since according to the same he was appointed on 3rd July, 1984 to 3rd August, 1984 and further, Exhibit M-1 and M-2 have also been referred and according to the same he was appointed on 15th October, 1984 to 28th December, 1984. By way of calculation, the period of service comes to 56 days only. This workman has not been able to rebut it since he has not produced any record to prove that he had been in service of the respondent for more than 240 days and on the face of it he is not entitled for any relief. There is no dispute that he was involved in an accident while being in the service of the respondent and for that he must have compensated by ESI Scheme and for that respondent-management could hardly be burdened in a case of this type. Sentiments do not count much and, it is the record which is weighed to determine the rights of the parties. On the face of it, the workman has not able to prove his case and as such the reference is accordingly answered against him.

ISSUE NO. 1.

8. During the course of arguments, no reference has been made to this issue and as such the same is accordingly disposed of. The 28th January, 1987.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

Endst. No. 156, dated the 4th February, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

No. 9/3/87-6Lab./811.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of (i) State Transport Controller, Haryana, Chandigarh, (ii) Haryana Roadways, Faridabad.

IN THE COURT OF SHRI A. S. CHALIA,
PRESIDING OFFICER,
LABOUR COURT, FARIDABAD

Reference No. 424 of 1985

between

SHRI ROOP CHAND, WORKMAN AND THE
RESPONDENT-MANAGEMENT OF (I) STATE
TRANSPORT CONTROLLER, HARYANA,
CHANDIGARH (II) HARYANA ROADWAYS,
FARIDABAD, THROUGH GENERAL
MANAGER

Present:

Shri Bhim Singh Yadav, for the workman.

Shri P. K. Sachdeva, for the respondent-
management.

AWARD

This reference under section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947), as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—vide its endorsement No. ID/FD/48-85/29704-10, dated 17th July, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under section 7 of the said Act, arisen between Shri Roop Chand, workman and the respondent-management of (i) State Transport Controller, Haryana, Chandigarh (ii) Haryana Roadways, Faridabad.

2. The main facts of the case are that Roop Chand was employed by the respondent on 2nd February, 1974 as a Bus Conductor and he had continued in service since then. According to him on 11th January, 1983 he had received a message about the serious condition of his mother and he had accordingly left for his native village and he had to attend her there and could not attend his duty on 12th January, 1983. His claim is that on 15th January, 1983 he had submitted an application by post requesting to grant him balance rests since he had 6/7 rest at his credit. Then on 24th January, 1983 he had applied for one month leave and earned leave was at his credit and then on 23rd February, 1983 he had applied for extension of leave and after the expiry thereof he had reported for duty on 24th March, 1983 but he was not allowed to resume his duty. He had made an application to the General Manager requesting him to take him on duty and he had called for the report about the said matter and Duty Inspector had been putting him off of this pretext or the other and he had sent letter to the General Manager on 5th April, 1983 pointing that he has been visiting office every day but he had not been allowed to resume his work. His allegations are that respondent had terminated his services,—vide letter dated 16th May, 1983 on the ground that he had been absent from duty with effect from 12th January, 1983 and this order is illegal, un-lawful, *malafide*, against the principal of natural justice, arbitrary, colourable exercise of powers and abuse of the managerial and official powers. It has also been pointed out by him that he had filed an appeal against the said order to the State Transport Controller but that has not been disposed of so far. He claims that he never absented from duty and his services have been terminated in an illegal and void manner. Accordingly request has been made by him to reinstate him with full back wages and further with continuity of service, also.

3. On notice, reference has been contested by the respondent management and written statement has been filed. It has been denied that Shri Roop Chand was permanent employee and his services record was clean and blotless. So far as withholding of increments is concerned it has been contended that same were withheld by the competent authority on valid grounds. It has been admitted that he had performed his duty on 11th January, 1983 and thereafter he had remained absent without getting his leave sanctioned. It is also denied that he had sent his application dated 15th January, 1983. It has also

been denied that he had reported to the Duty Inspector and had met the General Manager also. The plea taken is that chargesheet dated 10th February, 1983 was framed against him and he had not replied the same and then it was got published in *ADHIKAR*, dated 22nd April, 1983 directing him to submit his explanation within 10 days but despite of the same, he had not turned up and ultimately his services were terminated,—vide order dated 10th May, 1983. The claim made is that this order is perfectly legal and lawful and valid one also. It has also been denied that he had filed an appeal against the order of termination. By way of rejoinder Roop Chand has repeated his claim as well as allegations.

4. On the pleadings of the parties, my learned predecessor had framed the following issue on 16th October, 1985 :—

(1) As per reference ?

5. In support of the defence, respondent has examined its clerk as MW-1, Naresh Kumar MW-2 is another clerk of the respondent. On the other hand, Roop Chand appeared as MW-2 and he has examined Lekh Raj Punch of his village also.

6. I have heard the parties as represented above. My finding has been as below :—

Issue No. 1:

7. In between the parties there is no dispute that Roop Chand had not turned up on 12th January, 1983 to perform his duties and he had remained continuously absent from duty. It has been claimed by him that he had contacted the Duty Inspector on 24th March, 1983 and later on had made an application to the General Manager also and then on 5th April, 1983 he had sent another letter to the General Manager. On the other hand, the allegations of the respondent are that he had never turned up, to join duty and ultimately his services had to be terminated.

8. The respondent had proceeded against Roop Chand,—vide charge-sheet Ex- M-1, dated 10th February, 1983. It was alleged that he had been absented since 12th January, 1983 without any intimation. Ex. M-6 is an acknowledgement thereof. The charge-sheet was delivered to the respondent and admittedly he had not submitted his explanation. Finding no other alternative, the respondent had got published a notice in *ADHIKAR* dated 22nd April, 1983 Ex. M-3 and despite of the same he had not replied the charge-sheet and thereafter his services were terminated,—vide order dated 10th May, 1983 (Ex. M-4).

On the other hand the defence of Roop Chand has been that he had left for village since his mother was seriously sick and he had to be at the house to attend her and he had submitted several applications to the respondent to grant him rests as well as earned leave also, which are due to him. To prove this, he has placed on file several documents. Firstly there is application dated 15th January, 1983 Ex. W-1 addressed to the respondent and it was got registered on 17th January, 1983,—vide Ex. W-2. Further according to him he had submitted his application dated 24th January, 1983 Ex. W-3,—vide U.P.C.—vide W-4 and then he had submitted his application dated 23rd February, 1983 Ex. W-4/A,—vide U.P.C. Ex. W-5. He has further referred to his application dated 5th April, 1983 Ex. W-7, addressed to the General Manager under U.P.C.—vide Ex. W-8 and finally reference has been made to W-9 referring appeal to the State Transport Controller against the termination of his service.

9. After giving my serious consideration to the matter in dispute I am of the opinion that the pleas taken by the respondent have some footing and substance also. There is no dispute that Roop Chand was employed in 1974 and against him no other record of adverse nature has been placed on the file. He had left for his village due to serious condition of his mother and he had attended her. In normal circumstances, no employee would prefer to remain absent from duty until and unless there are compelling reasons for doing so. According to the record of the respondent he had 180 days earned leave at his credit and he could avail the same under compelling circumstances. Number of documents placed by him on the file give an indication that he was quite alive for his absence from duty and he had applied not once but thrice for the sanction of his leave. It is a pity that in the record of the respondent there is no mention of his application. This case is of its own type and proper care has to be taken to safeguard the interest of this old employee of the respondent. I would have accepted the termination order as it is had the applications submitted by the workman been taken into consideration. It has got support and credence to the cause of this conductor. The order of termination is based on one side picture and is determined to the interest of employee.

10. In view of this discussion, I set aside the order of termination and reinstate him into his job with continuity of service. The period of absence would be adjusted against earned leave already lying in the account of this conductor. I

am not inclined to grant him back wages since he was some what negligent in remaining away from duty without getting the leave sanctioned and must now learn as to how to serve in the department of essential service nature. In my opinion this approach would meet the end of justice.

The reference accordingly is disposed of.

A. S. CHALIA,

Dated 22nd January, 1987.

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 152, dated 4th February, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of Industrial Dispute Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 24th March, 1987

No. 9/2/87-6Lab./1721.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana State Co-operative Housing Finance Society, Chandigarh:—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 204 of 1985

between

SHRI BALJEET SINGH, WORKMAN AND THE MANAGEMENT OF HARYANA STATE
CO-OPERATIVE HOUSING FINANCE SOCIETY, CHANDIGARH

Present :—

Shri Karan Singh, A. R., for the workman.

Shri Gopal Parshad, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Baljeet Singh and the management of Haryana State Co-operative Housing Finance Society, Chandigarh, to this court, for adjudication,—vide Haryana Government Gazette Notification No. 48446—50, dated 2nd December, 1986 :—

Whether the termination of services of Shri Baljeet Singh is justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notice were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Helper on 8th February, 1984 but the respondent choose to terminate his service unlawfully on 12th July, 1985 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, it is alleged that the petitioner was initially employed for a period of 89 days and his tenure was subsequently extended for fixed periods and ultimately his services were dispensed with,—vide order dated 27th February, 1985 with effect from 12th February, 1985. It is further alleged that the petitioner's appointment was purely on *ad hoc* basis, which could be terminated at any time without any prior notice and the same was subject to the appointment of the regular candidate to be sponsored by the Employment Exchange or Board of Directors of the respondent society.

4. On the pleading of the parties, the following issue was framed by me on 29th September, 1986 :—

(1) As per terms of reference.

5. The petitioner himself appeared as WW-1 and the respondent examined Shri Heshiar Singh, Peon as MW-1.

6. Heard.

7. In the demand notice raised by the petitioner with the Labour Department that his services were terminated on 12th February, 1985. The case of the respondent is that services of the petitioner were terminated on 12th February, 1985 but the petitioner when he appeared in the Court as WW-1 stated that his services were terminated on 27th February, 1985. In any case petitioner's employment in the month of February, 1984 and termination in the month of February, 1985, is the undisputed case of the parties. That would mean that the petitioner had put in more than 240 days of actual work with the respondent, in the last 12 calendar months preceding the date of termination. The plea of the respondent that the petitioner's appointment was purely on *ad hoc* basis is not available to nullify the provisions of section 25F of the said Act, because before passing the order of termination, compliance of this section was mandatory on the part of the respondent, which admittedly was never done. It is immaterial that the respondent choose to appoint the petitioner for 89 days and thereafter extended his tenure three times before the petitioner completed more than one year of employment with the respondent, so, the petitioner's termination squarely falls within the ambit of term "retrenchment" as defined in section 2(oo) of the said Act, which could not have been brought about by the respondent without complying with the mandatory provisions of the said Act. So, the petitioner's termination was *void ab initio* and as such, the same is set aside. Order of termination was passed in the month of February, 1985 and the demand notice received alongwith the order of reference is dated 6th August, 1985. That would mean that the same was raised within six months of his termination, which delay cannot be viewed adversely. Under these circumstances, the petitioner is ordered to be reinstated with continuity of service and with full back wages. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Dated the 12th February, 1987.

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 204-85/431, dated 5th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

KULWANT SINGH,

Secretary to Government, Haryana,
Labour and Employment Department.